



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0412; FRL-9818-01-R9]

Determinations of Attainment by the Attainment Date, California Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards and Marginal for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Nevada County (Western part) and Ventura County areas in California, both classified as Serious for the 2008 ozone National Ambient Air Quality Standards (NAAQS), attained the 2008 ozone NAAQS by the July 20, 2021 attainment date. The EPA is also proposing to determine that six areas in California classified as Marginal for the 2015 ozone NAAQS, attained the 2015 ozone NAAQS by the August 3, 2021 attainment date. These six areas are: Butte County, Calaveras County, San Luis Obispo (Eastern part), Sutter Buttes, Tuolumne County, and Tuscan Buttes. Our proposed determination of attainment is based on the exclusion of exceedances of the 2008 and 2015 ozone NAAQS that occurred on multiple days in 2018 and 2020, because the exceedances are due to exceptional events. We are further proposing to find that, if we finalize these proposed determinations of attainment by the attainment date for the Nevada County (Western part) and Ventura nonattainment areas, then the requirement for the state to have contingency measures for Reasonable Further Progress (RFP) and attainment for the 2008 ozone NAAQS for these areas will no longer apply, because the contingency measures would never be needed given the attainment of the NAAQS. This action, if finalized as proposed, will fulfill the EPA's statutory obligation to determine whether these ozone nonattainment areas attained the NAAQS by the relevant attainment date.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0412, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to our public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; By phone: (415) 972-3407 or by email: lawrence.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” means the EPA.

Table of Contents

I. Background

- A. Statutory and regulatory background for the proposed actions
- B. Determination of attainment or failure to attain
 - 1. 2008 ozone NAAQS

- 2. 2015 ozone NAAQS
- C. Data considered for this proposed determination
- D. Areas addressed in proposed action
 - 1. Areas classified Serious for the 2008 ozone NAAQS
 - 2. Areas classified Marginal for the 2015 ozone NAAQS
- II. Proposed determinations of attainment by the attainment date
 - A. Determinations of attainment and the EPA's analysis of relevant air quality monitoring data
 - B. Exceptional events relevant to the EPA's analysis of relevant air quality monitoring data
 - C. Effect of this proposal: designation and classification
 - D. Effect of this proposal: contingency measures
- III. Environmental Justice Considerations
- IV. Summary of Proposal
- V. Statutory and Executive Order Reviews

I. Background

A. Statutory and regulatory background for the proposed actions

The Clean Air Act (CAA or "Act") requires the EPA to establish primary and secondary National Ambient Air Quality Standards (NAAQS or "standards") for certain pervasive pollutants that "may reasonably be anticipated to endanger public health and welfare."¹ The primary NAAQS is designed to protect public health with an adequate margin of safety, and the secondary NAAQS is designed to protect public welfare and the environment. The EPA has set standards for six common air pollutants, referred to as criteria pollutants, including ozone (O₃). These standards represent the air quality levels an area must meet to comply with the CAA.

Ozone is a gas created in the troposphere by chemical reactions between volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the presence of sunlight. Ground-level ozone can harm human health and the environment. Ozone exposure has been associated with increased susceptibility to respiratory infections, increased medication use by asthmatics, and increased health care visits, emergency department visits, and hospital admissions for individuals with respiratory disease. Ozone exposure may also contribute to metabolic diseases, such as diabetes, and premature death, especially in people with heart and lung disease.

¹ CAA section 108(a).

In March 2008, the EPA strengthened the ozone NAAQS, establishing primary and secondary 8-hour ozone standards at a level of 0.075 ppm (“2008 ozone NAAQS” or “2008 ozone standards”).² The numerical level of the NAAQS had previously been set at 0.08 ppm. In October 2015, the EPA further strengthened the primary and secondary eight-hour ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm (“2015 ozone NAAQS” or “2015 ozone standards”).³ Both of these standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed the numerical level of the standard. Section 107(d) of the CAA requires the EPA to designate an area “nonattainment” if it is violating the standards or if it has sources contributing to a violation of the standards in a nearby area. The EPA designates areas for each standard separately, and makes determinations of attainment individually for each area and each standard. For ozone standards, the EPA classifies nonattainment areas as “Marginal,” “Moderate,” “Serious,” “Severe,” or “Extreme,” depending upon ambient air monitoring results calculated as an ozone design value of the area at the time of designation.^{4,5} An ozone nonattainment area with a higher classification is subject to a greater number of, and more stringent, CAA planning and control requirements than lower classification areas, but the state is provided more time to attain the NAAQS.⁶

B. Determination of attainment or failure to attain

The EPA is required to determine whether areas designated nonattainment attained the NAAQS by the applicable attainment date, and to take certain steps for areas that failed to attain.⁷ For a concentration-based standard, such as the 2008 and 2015 ozone NAAQS, the

² 73 FR 16436 (March 27, 2008).

³ 80 FR 65291 (October 26, 2015).

⁴ See CAA section 181(a)(1).

⁵ A design value is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The design value for the 2015 ozone and 2008 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The design value is calculated for each air quality monitor in an area and the area’s design value is the highest design value among the individual monitoring sites in the area.

⁶ See, generally, subpart 2 of part D of title I of the CAA.

⁷ CAA section 181(b)(2).

determination of attainment or failure to attain is based on a nonattainment area's design value, as described below.

1. 2008 ozone NAAQS

Under the EPA regulations at 40 Code of Federal Regulations (CFR) part 50, appendix P, the 2008 ozone NAAQS is attained at a monitor site when the design value, (i.e., the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration) does not exceed 0.075 ppm. The data handling convention in Appendix P dictates that concentrations shall be reported in parts per million to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and would exceed the standard, but a design value of 0.0759 is truncated to 0.075 and attains the 2008 ozone NAAQS.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS) database.⁸ Ambient air quality monitoring data for the 3-year period preceding the year of the attainment date (i.e., 2018-2020 for the 2008 ozone NAAQS Serious areas with an attainment date of July 20, 2021) must meet the data completeness requirements in Appendix P.⁹ The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness. Additional information on data handling conventions

⁸ The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for nonattainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the Web site at <https://www.epa.gov/aqs>.

⁹ 40 CFR part 50, appendix P, section 2.3(b).

for the 2008 ozone NAAQS is found in the Technical Support Document (TSD) accompanying this rulemaking.¹⁰

2. 2015 ozone NAAQS

Under the EPA regulations at 40 CFR part 50, appendix U, the 2015 ozone NAAQS is attained at a site when the design value (i.e., the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration) does not exceed 0.070 ppm. The data handling convention in Appendix P dictates that concentrations shall be reported in “ppm” to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a design value of 0.0709 is truncated to 0.070 and attains the 2015 ozone NAAQS.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's AQS database. Ambient air quality monitoring data for the 3-year period preceding the attainment date (i.e., 2018-2020 for the 2015 ozone NAAQS Marginal areas with an attainment date of August 3, 2021) must meet the data completeness requirements in Appendix U.¹¹ The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness. Additional information on data handling conventions for the 2015 ozone NAAQS is found in the technical support document (TSD) accompanying this rulemaking.

C. Data considered for this proposed determination

Because the design value is based on three complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date. Accordingly, for

¹⁰ Technical Support Document (TSD) Regarding Ozone Monitoring - Data Determinations of Attainment under the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) for Select Areas in California.

¹¹ See 40 CFR part 50, appendix U, section 4(b).

these areas in California with attainment dates of July 20, 2021 and August 3, 2021, the areas must show attainment by December 31, 2020. Our proposed determination is therefore based upon the 2018-2020 design value for each area, which is based upon complete, quality-assured and certified ozone monitoring data from calendar years 2018, 2019, and 2020. The data the EPA is using to calculate the 2018-2020 design values for these areas are provided in the accompanying TSD, which can be found in the docket for this rulemaking.

D. Areas addressed in proposed action

This notice includes proposed determinations of attainment by the attainment date for eight areas in California.¹² For the 2008 ozone NAAQS, this proposal addresses the Ventura County area and the Nevada County (Western part) area (or “Western Nevada County area”), both of which are classified Serious for the 2008 ozone NAAQS, with an attainment date of July 20, 2021. For the 2015 ozone NAAQS, this proposal addresses the Butte County, Calaveras County, San Luis Obispo (Eastern part) (or “Eastern San Luis Obispo”), Sutter Buttes, Tuloumne County, and Tuscan Buttes areas. These six areas are classified Marginal for the 2015 ozone NAAQS, with an attainment date of August 3, 2021. In separate rulemakings, the EPA has recently proposed determinations of attainment by the attainment date and findings of failure to attain for the 2008 and 2015 ozone NAAQS for other areas in California and nationwide.¹³ The EPA omitted some areas in California from the national notices because the California Air Resources Board (CARB) had submitted exceptional events demonstrations for events in 2018 and 2020. The EPA required additional time to review these claimed exceptional events, as the EPA’s actions on these demonstrations would affect the areas’ design values. These demonstrations and the EPA’s evaluation of and action on these demonstrations is discussed in section II.B of this proposed rulemaking.

¹² This notice does not address all ozone nonattainment areas in California with attainment dates in 2021. On April 13, 2022, the EPA published proposed determinations of attainment or failure to attain for areas across the country classified Serious for the 2008 ozone standards and Marginal for the 2015 ozone standards (see 87 FR 21842 (April 13, 2022) and 87 FR 21825 (April 13, 2022)), including several areas in California.

¹³ 87 FR 21842 (April 13, 2022) and 87 FR 21825 (April 13, 2022).

1. Areas classified Serious for the 2008 ozone NAAQS

The Ventura County nonattainment area consists of the main portion of Ventura County (excluding the Channel Islands of Anacapa and San Nicolas Islands), within California's South Central Coast Air Basin. The Western Nevada County area consists of the western portion of Nevada County, within the Mountain Counties Air Basin in northern California. For more information about these areas, see the TSD) for California for designations for the 2008 ozone NAAQS, which is included in the docket for this rulemaking.¹⁴ For the 2008 ozone NAAQS, the Ventura County area and Nevada County (Western part) area were designated nonattainment effective July 20, 2012.¹⁵

At the time of designation, in a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of each nonattainment area's ozone problem, determined by the area's design value.¹⁶ The Ventura County area was initially classified Serious, with an attainment date of July 20, 2021. The Western Nevada County area was initially classified Marginal, with an initial attainment date of July 20, 2015. Effective June 3, 2016, the EPA determined that the Western Nevada County area had failed to attain the 2008 ozone NAAQS by the July 20, 2015 Marginal attainment date. This finding resulted in the area being reclassified to Moderate nonattainment, with a new attainment date of July 20, 2018.¹⁷ Effective September 23, 2019, the EPA determined that the Western Nevada County area had failed to attain the 2008 ozone NAAQS by the July 20, 2018 Moderate attainment date.¹⁸ This finding resulted in the area being reclassified to Serious nonattainment, with an attainment date of July 20, 2021.

2. Areas classified Marginal for the 2015 ozone NAAQS

¹⁴ See Technical Support Document for 2008 Ozone NAAQS Designations: California Area Designations for the 2008 Ozone National Ambient Air Quality Standards.

¹⁵ 77 FR 30088 (May 21, 2012).

¹⁶ 77 FR 30160 (May 21, 2012).

¹⁷ 81 FR 26698 (May 4, 2016).

¹⁸ 84 FR 44238 (August 23, 2019).

The Butte County area consists of the entirety of Butte County, in California's Sacramento Valley Air Basin, and areas of Indian country belonging to the Berry Creek Rancheria of Maidu Indians of California, the Enterprise Rancheria of Maidu Indians of California, the Mechoopda Indian Tribe of Chico Rancheria, and the Mooretown Rancheria of Maidu Indians of California. The Calaveras County area consists of the entirety of Calaveras County, in California's Mountain Counties Air Basin, and areas of Indian country belonging to the California Valley Miwok Tribe. The Eastern San Luis Obispo area consists of the eastern portion of San Luis Obispo County, and lies within California's South Central Coast Air Basin. The Sutter Buttes area is a mountaintop area that comprises the area of the Sutter Buttes above 2,000 feet (610 meters) in elevation in Sutter County. The Tuloumne County area consists of the entirety of Tuolumne County, in the Mountain Counties Air Basin, and areas of Indian country belonging to the Chicken Ranch Rancheria of Me-Wuk Indians of California and Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California. The Tuscan Buttes area is a mountaintop area that comprises the area of the Tuscan Buttes above 1,800 feet (549 meters) in elevation, in Tehama County. For more information about these areas, see the Technical Support Document (TSD) for California for designations for the 2015 ozone NAAQS, which is included in the docket for this rulemaking.¹⁹ Effective August 3, 2018, the EPA designated the Butte County, Calaveras County, Eastern San Luis Obispo, Sutter Buttes, Tuloumne County and Tuscan Buttes areas nonattainment for the 2015 ozone NAAQS.²⁰ The areas were classified Marginal for this standard, and required to attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than three years from the date of designation as nonattainment, i.e., August 3, 2021.²¹

II. Proposed determinations of attainment by the attainment date

¹⁹ See CALIFORNIA: Intended Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document (TSD).

²⁰ 83 FR 25776 (June 4, 2018).

²¹ See 40 CFR 51.1303(a).

The EPA is proposing this action to fulfill its statutory obligation under CAA section 181(b)(2) to determine whether select ozone nonattainment areas with attainment dates in 2021 attained the standard by their applicable attainment dates. Specifically, we are proposing to determine that the Ventura County and Western Nevada County nonattainment areas attained the 2008 ozone NAAQS by the attainment date of July 20, 2021 and that the Butte County, Calaveras County, Eastern San Luis Obispo, Sutter Buttes, Tuolumne County and Tuscan Buttes areas attained the 2015 ozone NAAQS by the attainment date of August 3, 2021. As discussed in section I.D of this proposed rulemaking, the EPA has addressed proposed determinations for other areas in California and around the country in separate rulemakings. This proposed determination is based on complete, quality-assured, certified data for the three-year period before the attainment date for each area (see design value data presented in Tables 1 and 2 below).

We are also proposing to determine that, if we finalize these proposed determinations of attainment by the attainment date for the Nevada County (Western part) and Ventura nonattainment areas, then the requirement for the state to have contingency measures for failure to meet Reasonable Further Progress (RFP) and failure to attain for the 2008 ozone NAAQS will no longer apply, because contingency measures would never be needed given the attainment of the NAAQS. (see section II.D).

A. Determinations of attainment and the EPA's analysis of relevant air quality monitoring data

The EPA evaluated air quality data to determine if these nonattainment areas attained or failed to attain the 2008 and 2015 ozone NAAQS by their applicable attainment dates. The design values for the 2018-2020 period for the two areas classified Serious for the 2008 ozone NAAQS are shown in Table 1, and the design values for the six areas classified Marginal for the 2015 ozone NAAQS are shown in Table 2.

Table 1 — 2008 Ozone NAAQS Serious Nonattainment Area Evaluation Summary^a

2008 NAAQS Nonattainment Area	2018-2020 Design value (ppm)
Nevada County (Western part)	0.075

Ventura County	0.075
----------------	-------

^aThe data shown exclude exceedances due to exceptional events.

Table 2 — 2015 Ozone NAAQS Serious Nonattainment Area Evaluation Summary^a

2015 NAAQS Nonattainment Area	2018-2020 Design value (ppm)
Butte County	0.070 ^b
Calaveras County	0.069
San Luis Obispo (Eastern part)	0.070
Sutter Buttes	0.070
Tuolumne County	0.070
Tuscan Buttes	0.070

^a The data shown exclude exceedances due to exceptional events.

^b The average percent completeness for one of the monitors in Butte County, located in Paradise, CA, is 88 percent due to a power loss caused by a regional California wildfires. Per 40 CFR part 50, Appendix U, 4(c) CARB submitted a request to the Regional Administrator for Region 9 to count missing data for 79 days between November 8, 2018, and January 25, 2019, towards the minimum data completeness requirements. This request was approved and results in data completeness over 90 percent on average over the three-year period of 2018-2020 for the site; therefore, this design value is considered valid. For more information regarding the Paradise monitor data certification and the state's request, see the TSD for this notice and data certification letters included in this docket.

As explained in section I.B, the 2008 ozone NAAQS is met at an ambient monitoring site when the design value for the area does not exceed 0.075 parts per million (ppm). The 2015 ozone NAAQS is met at an ambient monitoring site when the design value for the area does not exceed 0.070 parts per million (ppm). The design values shown in Table 1 show that the Ventura County and Western Nevada County areas have met the 2008 ozone NAAQS. The design values shown in Table 2 show that the Butte County, Calaveras County, Eastern San Luis Obispo County, Sutter Buttes, Tuolumne County and Tuscan Buttes areas have met the 2015 ozone NAAQS. The data the EPA used to calculate the 2018-2020 design values for these areas are provided in the TSD for this action, which can be found in the docket for this rulemaking. Also found in the docket for this rulemaking are design value reports from the EPA's AQS database, and data certification materials from CARB for the relevant years.

B. Exceptional events relevant to the EPA's analysis of relevant air quality monitoring data

On March 22, 2007, the EPA adopted a final rule, "Treatment of Data Influenced by Exceptional Events," also known as the Exceptional Events Rule (EER), to govern the review and handling of certain air quality monitoring data for which the normal planning and regulatory

processes are not appropriate.²² On October 3, 2016, the EPA adopted revisions to this rule.²³

Under the EER, the EPA may exclude data from use in determinations of NAAQS exceedances and violations if a state demonstrates that an “exceptional event” (EE) caused the exceedance or exceedances.²⁴ Before the EPA can exclude data from these regulatory determinations, the state must flag the data in the EPA’s AQS database, notify the EPA of the state’s intent to submit an EE demonstration, and, after public notice and opportunity for comment, submit a demonstration to the EPA to justify the exclusion. The EPA considers the demonstration and concurs or nonconcurs with the state’s flag. If the EPA concurs that the exceedance was due to an exceptional event covered under the EER, the data is excluded from regulatory consideration, including from a determination of whether the area attained a NAAQS by its attainment date.

In submittals dated September 3, 2021, September 17, 2021, November 18, 2021, and December 8, 2021, CARB provided documentation for ozone exceedances that occurred at the monitors listed in Tables 3 and 4 below on multiple days in 2018 and 2020, and which the state had flagged as due to wildfire ozone exceptional events.²⁵ These events occurred during the July 26-August 10, 2018 and August 18-October 4, 2020 time periods. A full list of days identified as exceptional events at each monitor is included in Tables 1 and 2 in the TSD for this rulemaking.

Table 3 — Exceedances due to Exceptional Events – 2008 Ozone NAAQS

2008 NAAQS Nonattainment Area	Monitor	Number of exceedances excluded in 2018	Number of exceedances excluded in 2020
--	----------------	---	---

²² 72 FR 13560 (March 22, 2007).

²³ 81 FR 68216 (October 3, 2016).

²⁴ 40 CFR 50.1, 50.14.

²⁵ See: 1) letter from Michael Benjamin, D. Env., Chief, Air Quality Planning and Science Division, CARB to Elizabeth Adams, Director, Air and Radiation Division, EPA Region 9, dated September 3, 2021, transmitting *Exceptional Events Demonstration for Ozone Exceedances: Northern California July-August 2018 Wildfire Events*; 2) letter from Michael Benjamin, D. Env., Chief, Air Quality Planning and Science Division, CARB to Elizabeth Adams, Director, Air and Radiation Division, EPA Region 9, dated September 17, 2021, transmitting *Exceptional Events Demonstration for Ozone Exceedances: Eastern Portion of San Luis Obispo County, California August 2018 Wildfire Events*; 3) letter from Michael Benjamin, D. Env., Chief, Air Quality Planning and Science Division, CARB to Matthew Lakin, Acting Director, Air and Radiation Division, EPA Region 9 dated November 18, 2021, transmitting *Exceptional Events Demonstration for Ozone Exceedances: Northern California 2020 Wildfire Events*; and 4) letter from Michael Benjamin, D. Env., Chief, Air Quality Planning and Science Division, CARB to Matthew Lakin, Acting Director, Air and Radiation Division, EPA Region 9 dated December 8, 2021, transmitting *Exceptional Events Demonstration for Ozone Exceedances: Southern California 2020 Wildfire Events*.

Nevada County (Western part)	Grass Valley (06-057-0005)	11	5
Ventura County	Simi Valley (06-111-2002)	0	5

Table 4 — Exceedances due to Exceptional Events – 2015 Ozone NAAQS

2015 NAAQS Nonattainment Area	Monitor	Number of exceedances excluded in 2018	Number of exceedances excluded in 2020
Butte County	Paradise (06-007-0007)	11	0
Calaveras County	San Andreas – Gold Strike (06-009-0001)	8	0
San Luis Obispo (Eastern part)	Red Hills (06-079-8005)	5	5
Sutter Buttes	Sutter Buttes (06-101-0004)	9	2
Tuolumne County	Sonora (06-109-0005)	11	3
Tuscan Buttes	Tuscan Butte (06-103-0004)	9	0

The EPA reviewed the documentation submitted by the State and concurred with CARB’s determinations that the exceedances identified by CARB in 2018 and 2020 and listed in Tables 1 and 2 in the TSD accompanying this rulemaking were caused by wildfire ozone exceptional events, and that these exceedances meet the criteria for exclusion from regulatory consideration under the EER. Accordingly, the EPA concurred with the exclusion flags for the days flagged in 2018 and 2020 for these areas and is excluding the monitored exceedances associated with these exceptional events from use in determinations of exceedances and violations, including the evaluation of whether the nonattainment areas considered in this notice have attained the relevant ozone NAAQS by the attainment date in accordance with CAA section 181(b)(2)(A).

A concurrence letter notifying CARB of our decision was sent on May 4, 2022.²⁶ Included with the letter were TSDs setting forth in detail the bases for the EPA's concurrences.²⁷ The state's demonstrations and the EPA's concurrence letter and accompanying TSDs are included in the docket for this rulemaking. Also included in the docket for this rulemaking are the state's Initial Notification of Intent (INI) documents, notifying the EPA of the state's intent to submit EE demonstrations, and the EPA's responses to the INIs.

For the reasons set forth in the concurrence letter and its enclosures, the EPA is excluding from regulatory consideration data showing exceedances due to exceptional events at the monitoring sites, as summarized below in Tables 3 and 4, in this determination of attainment. For additional information, including a list of each day excluded at each monitoring site, please see the TSD for this rulemaking action and the TSDs accompanying the EPA's May 4, 2022 concurrence letter.

C. Effect of this proposal: designation and classification

If the EPA finalizes these proposed determinations, the areas will remain designated nonattainment, and will retain their current classifications. A determination of attainment by the attainment date does not have the effect of redesignating an area to attainment. Redesignation of an area to attainment requires that an area has met all applicable requirements of CAA section 110 and Part D, and that the area has submitted, and the EPA has approved, a redesignation request and maintenance plan.²⁸

D. Effect of this proposal: contingency measures

Based on our proposed finding of attainment by the applicable attainment date, we are also proposing to find that the CAA requirement for a state implementation plan ("SIP") to

²⁶ Letter from Elizabeth J. Adams, Director, Air and Radiation Division, U.S. EPA Region IX, to Sylvia Vanderspek, Chief, Air Quality Planning Branch, California Air Resources Board, dated May 4, 2022.

²⁷ The 16 TSDs associated with this concurrence letter are organized under the heading, "Technical Support Documents for EPA Concurrence on July 26-August 10, 2018 and August 18-October 4, 2020 O₃ Exceedances in Northern and Southern California as Exceptional Events."

²⁸ Memorandum dated September 4, 1992 from John Calcagni, Director, EPA Air Quality Management Division, to Regional Air Directors, titled "Procedures for Processing Requests to Redesignate Areas to Attainment."

include contingency measures to be implemented in the event the area fails to attain (“attainment contingency measures”) or fails to meet reasonable further progress milestones (“RFP contingency measures”) will no longer apply to the Ventura County and Western Nevada County nonattainment areas for purposes of the 2008 ozone NAAQS.

Under CAA section 172(c)(9), attainment contingency measures must be implemented only if the area fails to attain by the attainment date. Therefore, if we finalize the determination that the Ventura County and Western Nevada County nonattainment areas have attained the 2008 ozone standard by the applicable attainment date, then attainment contingency measures for this NAAQS would never be required to be implemented, regardless of whether the areas continue to attain the NAAQS.²⁹ This proposed finding will not prevent the EPA, in the event that an area subsequently violates the NAAQS, from exercising its authority under the CAA to address violations of the NAAQS.³⁰

Additionally, the purpose of the RFP requirements under the CAA is to ensure progress toward attainment of the applicable NAAQS by the applicable attainment date. Consistent with this purpose, under CAA section 182(g), ozone nonattainment areas classified “Serious” or higher are required to meet RFP emission reduction “milestones” and to demonstrate compliance with those milestones, except when the milestone coincides with the attainment date and the standard has been attained.³¹ This specific statutory exemption from milestone compliance demonstration (MCD) submittals for areas that attained by the attainment date indicates that Congress intended that a finding that an area attained the standard—the finding made in a determination of attainment by the attainment date—would serve as a demonstration that RFP requirements for the area have also been met. In other words, if a Serious or above area has attained the NAAQS by the attainment date, then the RFP milestones have been sufficiently

²⁹ See *Bahr v Regan*, 6 F.4th 1059 (July 28, 2021).

³⁰ See *id.* at 1085; see also 42 U.S.C. § 7407(d)(3).

³¹ CAA section 182(g)(2).

achieved. Accordingly, such a finding of attainment by the attainment date would also indicate that RFP contingency measures could not be triggered and are therefore no longer necessary.³²

On February 28, 2022, the EPA found that California's MCD submittal for Ventura County and Western Nevada County adequately demonstrated that the applicable 2020 milestone for the 2008 ozone NAAQS had been met for these areas.³³ Notably, 2020 is the last applicable milestone prior to the attainment date for areas classified Serious for the 2008 ozone NAAQS. Therefore, if we finalize the determination that the Ventura County and Western Nevada County nonattainment areas have attained the 2008 ozone standard, RFP contingency measures for this NAAQS would never be required to be implemented, regardless of whether the area continues to attain the NAAQS. This proposed finding will not prevent the EPA, in the event that an area subsequently violates the NAAQS, from exercising its authority under the CAA to address violations of the NAAQS.³⁴

The state submitted contingency measures as part of the Final 2016 Ventura County Air Quality Management Plan and the Ventura County portion of the 2018 Updates to the California State Implementation Plan, and as part of the 2018 Western Nevada County Ozone Plan, respectively. The EPA will address these measures, as appropriate, in separate actions, taking into consideration this proposed finding of attainment by the applicable attainment date and resulting determination that the attainment and RFP contingency measure requirements are no longer required for these areas for purposes of the 2008 ozone NAAQS.

III. Environmental Justice Considerations

The EPA believes that this proposed action will not have disproportionately high or adverse human health or environmental effects on minority, low income, or indigenous populations. The purpose of this rule is to determine whether two nonattainment areas in

³² See *Matusow v. Wheeler*, No. 20-72279 (9th Cir. Apr. 21, 2022).

³³ Letter from Martha Guzman, Regional Administrator, EPA Region IX, to Richard W. Corey, Executive Officer, California Air Resources Board, February 28, 2022.

³⁴ See *Bahr* at 1085; see also 42 U.S.C. § 7407(d)(3).

California attained the 2008 ozone standard by their Serious area attainment date, and to determine whether six nonattainment areas in California attained the 2015 ozone standard by their Marginal area attainment date. These determinations are required under CAA section 181(b)(2) for purposes of implementing the 2008 and 2015 ozone standards and there are no particular facts or circumstances that would compel the EPA Administrator to consider information beyond the statutory criteria.

IV. Summary of Proposal

For the reasons articulated above, we are proposing to determine that:

- The Ventura County and Western Nevada County nonattainment areas attained the 2008 ozone NAAQS by the July 20, 2021 attainment date;
- The Butte County, Calaveras County, Eastern San Luis Obispo County, Sutter Buttes, Tuolumne County, and Tuscan Buttes nonattainment areas attained the 2015 ozone NAAQS by the August 3, 2021 attainment date; and
- The CAA requirement for the SIP to provide for contingency measures for attainment and RFP will no longer apply to the Ventura County and Western Nevada County nonattainment areas for the 2008 ozone NAAQS.

We note that we are not proposing a redesignation to attainment for any areas. The EPA would consider a redesignation to attainment for these areas following a submittal by the State of a formal redesignation request and maintenance plan.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This rule does not impose any new information collection burden under the PRA not already approved by the OMB.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.”

The EPA has identified tribal areas within three of the nonattainment areas covered by this proposed rule, that would be potentially affected by this rule. Specifically, as discussed in section I.D, the Butte County, Calaveras County, and Tuolumne County nonattainment areas addressed in this proposal have tribes located within their boundaries. A full list of impacted tribes is included in section I.D and in the TSD for this action.

The EPA has concluded that the proposed rule may have tribal implications for these tribes for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. If we finalize the determinations of attainment by the attainment date proposed in this notice, these determinations would also apply on tribal lands within the nonattainment areas. The nonattainment areas, including the tribal lands within the nonattainment areas, would remain designated nonattainment and would retain their existing classifications.

The EPA intends to notify the potentially affected tribes located within the boundaries of the nonattainment areas addressed in this proposal. Because our proposed action, if finalized, would not change the tribe's existing nonattainment designation or classification, we do not intend to offer government-to-government consultation on this proposal, however, we will initiate government-to-government consultation at the request of any of the tribes.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Upon review, the EPA did not identify any particular facts or circumstances that would indicate this action will have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. Upon review, the EPA did not identify any particular facts or circumstances that would indicate this action will have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.

Furthermore, with respect to the determinations of whether areas have attained the NAAQS by the attainment date, the EPA has no discretionary authority to address environmental justice in these determinations. The CAA directs that within 6 months following the applicable attainment date, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area attained the standard by that date. CAA section 181(b)(2)(A). Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to either the next higher classification or the classification applicable to the area's design value.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 8, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

[FR Doc. 2022-15032 Filed: 7/13/2022 8:45 am; Publication Date: 7/14/2022]